

Section 2 Alternatives Including Proposed Action & Water Delivery Options Considered but Not Selected

2.1 No Action Alternative

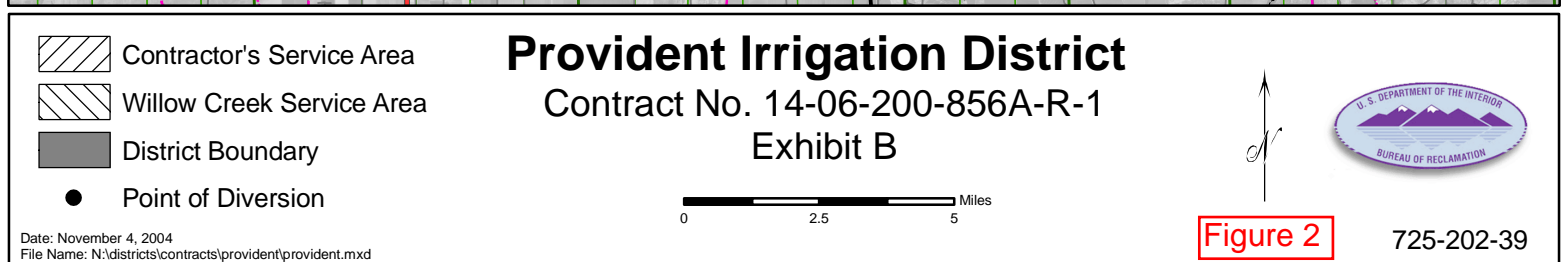
Under the No Action Alternative, Reclamation would not enter into a temporary contract leaving the maintenance of the wetlands solely dependent on the use of groundwater and unreliable surface water supplies from PID and other sources including regional rice tail water.

2.2 Proposed Action Alternative

The Proposed Action involves Reclamation entering into a three-year renewable water service contract with the Company to provide up to 3,000 AF of Incremental Level 4 water to its conservation easement lands (Figure 1). This water was purchased in 2005 from the Anderson-Cottonwood Irrigation District (ACID), a Sacramento River Settlement Contractor.

Although the current water service contract with the Company would be for three years, each year the IRWMT would have the opportunity to assess whether or not the 3,000 AF of water could be applied to a CVPIA refuge. If the water is not needed for one of these refuges, then the water would be provided to the Company for use only on its conservation easement lands.

The water would be delivered to the Company via the PID/Princeton-Codora-Glenn Irrigation District's joint pumping plant on the Sacramento River at river mile 123.9R (Figure 2). From this diversion point, the Company would be responsible for the control, carriage, handling, use, disposal, or distribution of water and its use consistent with appropriate wetland habitat water management. This water would be delivered to the Company's wetlands between July 1 and October 31. Prior to the delivery of water pursuant to this water service contract, the Company would need to prepare a wetland habitat water management plan for its conservation easement lands in order to ensure the effective use of the water to meet wetland resource needs. The Company would be required to make all reasonable efforts to complete the original wetland habitat management plan within one year of the execution of the water service contract.



2.3 Water Delivery Options Considered But Not Selected

The following are water delivery options that were considered for the ACID Purchase but not selected:

1. **Provide up to 3,000 AF of Incremental Level 4 Water to the Sacramento and Delevan National Wildlife Refuges (NWR)** These refuges are part of the Sacramento NWR Complex located in the Sacramento Valley on the west side of the Sacramento River. They have the water conveyance infrastructure in place to receive their respective Level 4 (optimum) water deliveries. In all years, with the possible exception of very dry years, these refuges receive their full Level 2 supplies. The Sacramento NWR has, in some years, been able to reallocate some of their Level 2 supplies to other water short CVPIA refuges through conservation actions. The Delevan NWR receive up to approximately 8,000 AF of Incremental Level 4 water annually. Prior to 2006, up to 5,300 AF of Incremental Level 4 was delivered to the Delevan NWR with water that Reclamation permanently purchased from the Proberta, Thomes Creek and Corning Water Districts (PTCD Purchase) in 1998. In three of the four water years since the ACID Purchase, the Delevan NWR has received some of the ACID Purchase water in combination with the PTCD Purchase water for Incremental Level 4 deliveries.
2. **Provide up to 3,000 AF of Incremental Level 4 water to the Sutter National Wildlife Refuge.** Presently, Sutter NWR located in the Sacramento Valley on the east side of the Sacramento River and a part of the Sacramento NWR Complex, is not able to receive its Level 2 and Incremental Level 4 water deliveries because the water conveyance infrastructure is not in place. The Sutter NWR is one of five CVPIA refuges that require external water conveyance facilities improvements in order to receive delivery of full Level 4 supplies. Since adequate conveyance facilities are not in place for Sutter NWR, the 3,000 AF of Incremental Level 4 water could not be provided to it.
3. **Provide up to 3,000 AF of Incremental Level 4 water to Gray Lodge Wildlife Area.** Gray Lodge Wildlife Area (WA) is a state refuge under CVPIA and is located north of the Sutter Buttes and west of Marysville on the east side of the Sacramento River in the Sacramento Valley. Similar to the Sutter NWR, it too lacks adequate external water conveyance infrastructure to receive its full Level 2 and Incremental Level 4 water deliveries. Because this refuge does not currently have the necessary external conveyance facilities, the 3,000 AF of Incremental Level 4 that is available could not be provided to it at this time. This delivery option is different from the previous two in that Reclamation is currently undertaking conveyance facilities construction with an expected target completion date of 2013. It is the intention to use the subject 3,000 AF purchased from ACID at Gray Lodge WA once construction is complete.
4. **Provide up to 3,000 AF of Incremental Level 4 water to San Joaquin Valley CVPIA refuges (SJV refuges).** The SJV refuges include units of San Luis NWR (San Luis, East and West Bear Creek, Freitas, and Kesterson), Merced NWR, Kern NWR, Pixley NWR; state refuges (Mendota WA, North Grasslands WA (includes Salt Slough

and China Island Units), Volta WA, and Los Banos WA); and the Grassland Resource Conservation District, a privately owned/managed wetlands . These refuges are located within the Central Valley Project (CVP) and California State Water Project (SWP) export service areas served by the Reclamation Central Valley Office (CVO) Jones Pumping Plant (Jones PP) and the SWP Banks Pumping Plant (Banks PP), respectively.

The SJV refuges East Bear Creek, Pixley, and Mendota do not presently have sufficient external water conveyance facilities for full Level 2 or Incremental Level 4 water deliveries. These three SJV refuges would not be able to receive the 3,000 AF of Incremental Level 4 water.

Reclamation delivers Level 2 water to the SJV [San Joaquin Valley] refuges via Jones PP [Pumping Plant] concurrent with Project water deliveries to CVP [Central Valley Project] agricultural and Municipal and Industrial (M&I) contractors. Level 2 water and Project water both come from the annual CVP yield and receive high pumping priority at the Jones PP. Incremental Level 4 water, on the other hand, is purchased water from usually non-CVP sources. If such water is purchased from upstream of the Delta sources (including San Joaquin River basin sellers), it has a considerably lower pumping priority at the Jones PP than Level 2 water or CVP Project water. Incremental Level 4 water is also purchased from other San Joaquin Valley sources that do not require pumping, because these sources are within the CVP Jones PP and SWP [State Water Project] Banks export service areas.

Providing Incremental Level 4 water purchased from upstream of the Delta sources to SJV refuges is challenging for the following reasons:

1. Presently, when pumping capacity is available at the Jones PP, such capacity is first allotted to the pumping of CVP water to the agricultural and M&I water contractors and Level 2 water to the SJV refuges, then to CVP contractors' other water transfers, and eventually to Incremental Level 4 water and other non-CVP water transfers. Therefore, Jones PP's pumping priorities limit the amount of capacity available, if any, for pumping Incremental Level 4 water.
2. Per the Biological Opinions (BOs) on the Coordinated Operations of the CVP and SWP, the 'window' for 'north' to 'south' water transfers across the Delta is limited to July through September only. To do so otherwise would likely require re-consulting with the Service and NOAA Fisheries regarding the transfer under the BOs.
3. For all 'north' to 'south' water transfers, the Delta must be in a 'balanced' state, as declared by Reclamation and DWR under the Coordination Operations Agreement. This condition typically exists during the summer months and may continue into the fall, depending on hydrology and Delta conditions.
4. Even if the Delta is in 'balance' and pumping capacity is available, 'north' to 'south' water transfers may still be subject to SWRCB [State Water Resources Control

Board] Delta water quality regulations that may prevent the transfer of Incremental Level 4 water purchased upstream of the Delta.

5. All 'north' to 'south' water transfers are subject to an assumed 20 percent loss factor to preserve Delta water quality (commonly referred to as Carriage Water) as required by the SWRCB. The actual amount of Carriage Water required varies, depending on hydrology and Delta water quality conditions during the transfer. Therefore, 600 AF of the 3,000 AF would not be delivered to a SJV refuge, but allowed to flow through the Delta and into San Francisco Bay.

Because of the uncertainties involved with the above reasons regarding 'north' to 'south' water transfers, providing the 3,000 AF of purchased Incremental Level 4 water to the SJV refuges was determined to not be the best use of the water.

Therefore, after giving consideration to the above delivery options, Reclamation, with the assistance of the Service, coordinated and negotiated with the Company to temporarily provide them the 3,000 AF of Incremental Level 4 water on an annual basis for the conservation easement lands until such time when this water could be provided to other CVPIA refuges, unless this water is called upon by the IRWMT for delivery to refuges during the contract performance period.

Section 3 Affected Environment & Environmental Consequences

3.1 Surface Water Resources

3.1.1 Affected Environment

The Sacramento River drains the north central portion of California, including the western slope of the Sierra Nevada, the southern slope of Mount Shasta and the eastern slope of the Coast Range. It has a total length of 384 miles and is California's longest and largest river, carrying nearly one-third of the state's total water runoff. Lake Shasta, located north of the City of Redding, is the principal impoundment on the river with a capacity of 4.5 million AF.

The Colusa Basin Drain conveys runoff and agricultural return flows from about one million acres of watershed and discharges to the Sacramento River at Knights Landing. During high flows, the Colusa Basin Drain is often diverted through the Knights Landing Ridge Cut to the Yolo Bypass. The Colusa Basin Drain is the single largest source of agricultural return flows to the Sacramento River.

3.1.2 Environmental Consequences

No Action

Under the No Action Alternative, the amount of surface water delivered to the Company's wetlands would decrease and, therefore, wetland habitat suitable for migratory waterfowl and GGS would likely decrease.

Proposed Action

Under the Proposed Action, the water would be delivered to the Company's wetlands areas via the PID/Princeton-Codora-Glenn Irrigation District's joint pumping plant on the Sacramento River at river mile 123.9R. From this diversion point, the Company would be responsible for the control, carriage, handling, use, disposal, or distribution of water and its use consistent with appropriate wetland habitat water management. This water would be delivered to the Company's wetlands between July 1 and October 31. Prior to the delivery of water pursuant to the Agreement, the Company would prepare a wetland habitat water management plan for their conservation easement lands in order to ensure the effective use of water supplies to meet wetland resource needs.

Cumulative Effects

The Proposed Action would not result in any cumulative effects to surface water resources in the area.

3.2 Land use

3.2.1 Affected Environment

The Company's service area consists of flat, mostly irregularly shaped, diked areas used for rice cultivation, open ponds, or shrub and emergent herbaceous wetlands. In addition, there is a dense aggregation of buildings in the north central portion of the service area. Approximately half of the area is in rice or fallowed rice fields with approximately half in wetlands. The center of the service area is a fairly broad, linear, continuous diked area, looking much like a flood bypass in aerial photographs, and containing the upper reaches of the Drain (Figure 1).

Overall land use appears intermediate between Sacramento NWR to the west and PID to the east. While the Sacramento NWR is mostly composed of natural or quasi-natural wetlands, the PID is mainly comprised of intensely managed wetlands for rice fields. The Company's service area is nearly 40 percent rice and nearly 60 percent natural wetlands.

3.2.2 Environmental Consequences

No Action

Under the No Action Alternative, land use would remain unchanged; however, the current wetland habitat within the Company's conservation easement lands could decrease due to a lack of water.

Proposed Action

Under the Proposed Action, land use would remain unchanged. The Company would be able to provide water to the wetland areas to maintain habitat for waterfowl, other non-avian species dependent on wetlands, and GGS.

Cumulative Effects

The Proposed Action would not contribute to cumulative impacts on land use.

3.3 Biological Resources

3.3.1 Affected Environment

Apart from the settlement in the north central part of the service area comprised of small houses, the majority of the Company's service area is devoted to rice fields or wetlands. By virtue of the Company's service area's position, it provides a broad corridor of wetlands between the Drain and the Sacramento NWR. This serves to provide valuable continuity to the wetland habitat available to the federally listed GGS, migratory birds, and other non-avian species.

The waterfowl in the region is quite large and diverse. The wetlands, which are composed of wildlife refuges, hunting clubs, flooded rice fields (rice decomposition), and irrigation canals and drains, provide the major wintering grounds for a substantial fraction of the birds using the Pacific Flyway.

Willow Creek-Lurline Wildlife Management Area is located within the Company's boundaries. The landscape is very flat, bordered by the Sierra and Coast ranges and surrounded by intensive agriculture (rice and other grains). The objective of this wildlife management area is to protect fall/winter habitat for waterfowl through the acquisition of conservation easements on privately owned wetlands. Central Valley wetlands are critical for Pacific Flyway waterfowl, with 44 percent wintering in the Sacramento Valley. As wetlands of the Central Valley have been lost (95 percent over the last 100 years), waterfowl have become increasingly dependent on the remaining wetlands in the Sacramento Valley. (USFWS website)

A species list, included in Table 1 below, was generated from the USFWS Sacramento Field Office's website on May 17, 2010 (USFWS 2010).

Table 1: Species Identified as Potentially Occurring in the Logandale, Princeton, Moulton Weir, and Maxwell USGS 7.5-minute Quadrangles

Common Name	Scientific Name	Federal Status ¹	Habitat in Area
INVERTEBRATES			
<i>Branchinecta conservatoria</i>	Conservancy fairy shrimp ¹	E	Potential, but would not be affected by the Proposed Action
<i>Branchinecta lynchi</i>	Vernal pool fairy shrimp ²	T	Potential, but would not be affected by the Proposed Action
<i>Desmocerus californicus dimorphus</i>	Valley elderberry longhorn beetle	T	Potential, but would not be affected by the Proposed Action
<i>Lepidurus packardii</i>	Vernal pool tadpole shrimp ²	E	Potential, but would not be affected by the Proposed Action
FISH			
<i>Acipenser medirostris</i>	Green sturgeon ²	T	Yes
<i>Hypomesus transpacificus</i>	Delta smelt	T	No
<i>Oncorhynchus mykiss</i>	Central Valley steelhead ^{2, 3}	T	Yes
<i>Oncorhynchus tshawytscha</i>	Central Valley spring-run Chinook salmon ^{2, 3}	T	Yes
<i>Oncorhynchus tshawytscha</i>	Winter-run Chinook salmon, Sacramento River ^{2, 3}	E	Yes

¹ Critical habitat designated for this species

Common Name	Scientific Name	Federal Status ¹	Habitat in Area
AMPHIBIANS			
<i>Rana aurora draytonii</i>	California red-legged frog	T	No
REPTILES			
<i>Thamnophis gigas</i>	Giant garter snake	T	Yes
BIRDS			
<i>Strix occidentalis caurina</i>	Northern spotted owl	T	No
<i>Coccyzus americanus occidentalis</i>	Western yellow-billed cuckoo	C	Potential, but would not be affected by the Proposed Action
PLANTS			
<i>Chamaesyce hooveri</i>	Hoover's spurge	T	No
<i>Cordylanthus palmatus</i>	Palmate-bracted bird's-beak	E	No
<i>Orcuttia pilosa</i>	Hairy Orcutt grass	E	No
<i>Tuctoria greenei</i>	Greene's tuctoria (=Orcutt grass)	E	No

¹ PE=Proposed Endangered, PT=Proposed Threatened, E=Endangered, T=Threatened, C=Candidate

² Listed under the jurisdiction of National Oceanic and Atmospheric Administration, Fisheries

³ Critical Habitat designated for this species

Non-listed species that could occur in the surrounding area include: mule (black-tailed) deer (*Odocoileus hemionus*), black-tailed Jackrabbit (*Lepus* spp.), opossum (*Didelphis marsupialis*), coyote (*Canis latrans*), raccoon (*Procyon lotor*), gray fox (*Urocyon cinereoargenteus*), striped skunk (*Mephitis mephitis*), raven (*Corvus corax*), robin (*Turdus migratorius*), Steller's jay (*Cyanocitta stelleri*), killdeer (*Charadrius vociferous*), and red-tailed hawk (*Buteo jamaicensis*).

3.3.2 Environmental Consequences

No Action

Under the No Action Alternative, wetlands within the Company's boundaries may not be able to be sustained for wildlife habitat, including migratory waterfowl, other non-avian species, and GGS.

Proposed Action

The Proposed Action would be beneficial to the area's biological resources particularly migratory waterfowl and GGS (although it is recognized that late summer water is not as beneficial as spring water). No adverse impacts to biological resources are expected, including special-status species such as GGS or anadromous fish species as water will be delivered via an existing pumping plant on the Sacramento River and existing conveyance systems.

Cumulative Effects

The Proposed Action would not result in adverse impacts to biological resources, therefore, it would not contribute to cumulative impacts to biological resources.

3.4 Cultural Resources

3.4.1 Affected Environment

A cultural resource is a broad term that includes prehistoric, historic, architectural, and traditional cultural properties. The National Historic Preservation Act (NHPA) of 1966 is the primary Federal legislation that outlines the Federal Government's responsibility to cultural resources. Section 106 of the NHPA requires the Federal Government to take into consideration the effects of an undertaking on cultural resources listed on or eligible for inclusion in the National Register of Historic Places (NRHP). Those resources that are on, or eligible for inclusion on, the NRHP are referred to as historic properties.

No negative impacts to cultural resources are anticipated because the land use would remain unchanged. No construction or other land use changes would be caused by the proposed provision of water to maintain existing operations. The proposed action would, in fact, tend to maintain the status quo.

3.4.1 Environmental Consequences

No Action

Under the No Action Alternative, there would not be an undertaking as defined by Section 301 of the NHPA. The condition of cultural resources would be the same as under the existing conditions. No impacts to cultural resources are associated with this No Action Alternative.

Proposed Action

The Proposed Action consists of entering into a three-year renewable water contract with the Company to provide water for wetlands management. Water would be conveyed through existing facilities operated by PID and would be used for wildlife refuge or wetland habitat water management. No ground disturbing activities, including excavation or construction are required to convey the water. This administrative action is not the type of activity that has the potential to affect historic properties pursuant to the regulations at 36 CFR Part 800.3(a)(1). As a result of this no potential to affect historic properties determination, no cultural resources would be impacted as a result of the Proposed Action.

Cumulative Effects

The Proposed Action has no potential to effect historic properties and, therefore, would not contribute to cumulative impacts to cultural resources.

3.5 Indian Trust Assets

3.5.1 Affected Environment

Indian Trust Assets (ITAs) are legal interests in property or rights held in trust by the United States for Indian Tribes or individuals. Trust status originates from rights imparted by treaties, statutes, or executive orders. These rights are reserved for, or granted to, tribes. A defining characteristic of an ITA is that such assets cannot be sold, leased, or otherwise alienated without Federal approval.

Indian reservations, rancherias, and allotments are common ITAs. Allotments can occur both within and outside of reservation boundaries and are parcels of land where title is held in trust for specific individuals. Additionally, ITAs include the right to access certain traditional use areas and perform certain traditional activities.

It is Reclamation policy to protect ITAs from adverse impacts resulting from its' programs and activities whenever possible. Types of actions that could affect ITAs include an interference with the exercise of a reserved water right, degradation of water quality where there is a water right or noise near a land asset where it adversely affects uses of the reserved land.

No Indian Trust Assets (ITAs) would be affected by the proposed action, which would simply maintain an existing operation in support of natural resources. The nearest ITA is the Colusa Rancheria, approximately eight miles to the southeast.

3.5.2 Environmental Consequences

No Action

Under the No Action Alternative, there are no impacts to ITAs since there would be no change in operations and no ground disturbance. Conditions related to ITAs would remain the same as existing conditions.

Proposed Action

The Proposed Action does not affect any ITAs. The nearest ITA is the Colusa Rancheria, approximately eight miles from the Proposed Action area and it would not be affected by the Proposed Action.

Cumulative Effects

The Proposed Action would not result in adverse impacts to ITAs and, therefore, would not contribute to cumulative impacts to ITAs.

3.6 Environmental Justice

3.6.1 Affected Environment

Executive Order 12898 requires each Federal agency to achieve environmental justice as part of its mission, by identifying and addressing disproportionately high adverse human health or environmental effects, including social and economic effects, of its programs and activities on minority populations and low-income populations of the United States.

3.6.2 Environmental Consequences

No Action

Under the No Action Alternative, there are no impacts to minority or low-income populations since there would be no change in operations and no ground disturbance. Conditions related to environmental justice would remain the same as existing conditions.

Proposed Action

Due to the nature of the Proposed Action (i.e., land use and agriculture would remain unchanged), there would be no effects to minority or low-income populations.

Cumulative Effects

As the Proposed Action does not have the potential to cause adverse impacts to economically disadvantaged or minority populations, it would not result in cumulative effects to environmental justice.

3.7 Global Climate Change

3.7.1 Affected Environment

The United Nations Intergovernmental Panel on Climate Change predicts that changes in the earth's climate will continue through the 21st century and that the rate of change may increase significantly in the future because of human activity. Many researchers studying California's climate believe that changes in the earth's climate have already affected California and will continue to do so in the future. Climate change may seriously affect the State's water resources. Temperature increases could affect water demand and aquatic ecosystems. Changes in the timing and amount of precipitation and runoff could occur.

Climate change is identified in the 2005 update of the California Water Plan (Bulletin 160-05) as a key consideration in planning for the State's future water management. The 2005 Water Plan update qualitatively describes the effects that climate change may have on the State's water supply. It also describes efforts that should be taken to quantitatively evaluate climate change effects for the next Water Plan update.

3.7.2 Environmental Consequences

No Action

Under the No Action Alternative, there are no impacts to climate since there would be no change in operations and no ground disturbance. Conditions related to climate change would remain the same as existing conditions.

Proposed Action

Since the Proposed Action would have no construction element and would use existing facilities within the range of normal operations, it would have no effect on climate change.

Cumulative Effects

The Proposed Action would not result in adverse impacts to climate change and, therefore, would not contribute to cumulative impacts to climate change.

Section 4 Consultation and Coordination

Reclamation notified the Service of its determination that the proposed action would have no adverse impacts to GGS. The proposed action would provide a cost-effective way to provide water to maintain habitat quality in a relatively broad corridor between the Sacramento NWR and the Drain and would, therefore, would benefit migratory waterfowl and other non-avian species in the area.

Consultation with the National Marine Fisheries Service was not required as the proposed action falls would not impact anadromous fish species.

While no impacts to endangered species or to historic/cultural resources have been indicated by the Proposed Action, consultation and coordination was conducted with the agencies and mandates considered below.

4.1 Fish and Wildlife Coordination Act (16 USC. 651 et seq.)

The Fish and Wildlife Coordination Act (FWCA) requires that Reclamation consult with fish and wildlife agencies (federal and state) on all water development projects that could affect biological resources.

4.2 Endangered Species Act (16 USC. 1521 et seq.)

Section 7 of this Act requires Federal agencies to ensure that all federally associated activities within the United States do not jeopardize the continued existence of threatened or endangered species or result in the destruction or adverse modification of the critical habitat of these species. Action agencies must consult with the U.S. Fish and Wildlife Service, which maintains current lists of species that have been designated as threatened or endangered, to determine the potential impacts a project may have on protected species.

Reclamation determined that the Proposed Action would not affect federally proposed or listed threatened and endangered species or their proposed or designated critical habitat. No further consultation is required under Section 7 of the Endangered Species Act.

4.3 Migratory Bird Treaty Act (16 USC § 703 ET SEQ.)

The Migratory Bird Treaty Act implements various treaties and conventions between the U.S. and Canada, Japan, Mexico and the former Soviet Union for the protection of migratory birds. Unless permitted by regulations, the Act provides that it is unlawful to pursue, hunt, take, capture or kill; attempt to take, capture or kill; possess, offer to or sell, barter, purchase, deliver or cause to be shipped, exported, imported, transported, carried or received any migratory bird, part, nest, egg or product, manufactured or not. Subject to limitations in the Act, the Secretary of the Interior (Secretary) may adopt regulations

determining the extent to which, if at all, hunting, taking, capturing, killing, possessing, selling, purchasing, shipping, transporting or exporting of any migratory bird, part, nest or egg will be allowed, having regard for temperature zones, distribution, abundance, economic value, breeding habits and migratory flight patterns.

4.4 National Historic Preservation Act (16 USC 470 et seq.)

The National Historic Preservation Act (NHPA) of 1966, as amended, is the primary legislation that outlines the Federal government's responsibility to cultural resources. Cultural resources include both archaeological and built environment resources. Section 106 of the NHPA requires that Federal agencies take into consideration the effects of their undertakings on historic properties. Historic properties are cultural resources that are listed on or eligible for inclusion in the National Register of Historic Places (National Register). The 36 CFR Part 800 regulations implement Section 106 of the NHPA and outline the procedures necessary for compliance with the NHPA.

Compliance with the Section 106 process follows a series of steps that are designed to identify if cultural resources are present and to what level they will be affected by the proposed Federal undertaking. The Federal agency must first determine if the proposed action is the type of action that has the potential to affect historic properties. Once that has been determined and an action, or undertaking, has been identified, the Federal agency must identify interested parties, determine the area of potential effect (APE), conduct cultural resource inventories, determine if historic properties are present within the APE, and assess effects on any identified historic properties. The Federal agency consults with the State Historic Preservation Officer (SHPO) on agency determinations and findings and seeks their concurrence with the Federal agency findings.

For the Proposed Action, there would be no modification to existing facilities, no ground disturbance, and no new construction. Water would be conveyed through existing facilities and used for wetland habitat management purposes. There would be no new land use or new irrigation to agricultural as a result of the Proposed Action. Therefore, the proposed administrative action has no potential to affect historic properties pursuant to 36 CFR 800.3(a)(1).

Section 5 List of Preparers and Reviewers

Shelly Hatleberg, Natural Resources Specialist, Mid-Pacific Region

Brad Hubbard, Natural Resources Specialist, Mid-Pacific Region

BranDee Bruce, Architectural Historian, Mid-Pacific Region

Tim Rust, Fish and Wildlife Program Manager, Mid-Pacific Region

Sonya Nechanicky, Refuge Water Conveyance Program Manager, Mid-Pacific Region

Section 6 References

- California Department of Fish and Game. 2009. California Natural Diversity Database Search of Threatened and Endangered Species Occurrences on Cannibal Island and Fields Landing Quads. Report printed on November 17, 2009.
- U.S. Fish and Wildlife Service. 2010. Listed/Proposed Threatened and Endangered Species for the _____ Quad. May 17, 2010.
<http://www.fws.gov/arcata/specieslist/speciesreport.asp>
- U.S. Fish and Wildlife Service. 2010. Willow Creek-Lurline Wildlife Management Area website information. <http://www.fws.gov/refuges/profiles/index.cfm?id=83570>

Section 7 Public Involvement

The Draft EA was circulated to interested parties for a 15-day public review period that began June 2, 2010 and ended June 16, 2010. The Draft EA was posted on Reclamation's Mid-Pacific (MP) Region NEPA website. Comment letters were received from Daniel Cardoza of Adams Broadwell Joseph and Cardoza Attorneys at Law (dated June 14, 2010), Paul Forsberg of California Department of Fish and Game (dated June 15, 2010), and Don Anderson of Redding, California (dated June 15, 2010). The response to comments is attached as Appendix A.

**APPENDIX A
RESPONSE TO COMMENTS
ON DRAFT EA**

**TEMPORARY SUPPLY OF INCREMENTAL LEVEL 4 WATER
TO WILLOW CREEK MUTUAL WATER COMPANY
FOR WETLANDS MANAGEMENT
FINAL ENVIRONMENTAL ASSESSMENT**

RESPONSE TO COMMENTS

The Temporary Supply of Incremental Level 4 Water to Willow Creek Mutual Water Company (Company) for Wetlands Management Draft Environmental Assessment (EA) was issued for a 15-day public comment review period on June 2, 2010. Comment letters were received from Daniel Cardoza of Adams Broadwell Joseph and Cardoza Attorneys at Law (dated June 14, 2010), Paul Forsberg of California Department of Fish and Game (dated June 15, 2010), and Don Anderson of Redding, California (dated June 15, 2010). Following are Reclamation's responses to those letters:

1. Daniel Cardoza (Adams Broadwell Joseph and Cardoza Attorneys at Law)

Response to Comment DC-1: This comment (encompassing pages 1 through 7) is specific to the Contract for Temporary Supply of CVP Water to the Company. These comments have been addressed in the amended Contract, completed in July, 2010 and will not be further addressed in this Response to Comments as it focuses on comments specifically relating to the Draft EA. Comments imbedded within Comment DC-1 that relate to NEPA and the EA/FONSI are responded to in Response to Comments DC-2 through DC-8.

The U.S. Fish & Wildlife Service (Service) considers private "conservation easement lands" they have approved as "units" of the National Wildlife Refuge System, as referenced in the CVPIA. The Service has approved the Company's conservation easements lands, therefore making them eligible to receive the 3,000 acre-feet of water being provided for under the amended Contract. The date June 1 of each year under the amended Contract was negotiated between Reclamation and the Company. Later in the spring was deemed beneficial to the refuges to allow sufficient time for determining refuge water supply needs in response to changing hydrologic and Delta conditions. On the other hand, the settled upon date also allows time for the Company to develop and submit their water delivery schedule to Reclamation in advance of when they would need the water, which is typically in late summer and fall. In general, contracts become public documents once approved and signed by all parties. While being negotiated, however, contracts, and particularly water purchase contracts, are "confidential" because they often times contain sensitive and confidential information (terms and conditions), such as financial matters, that pertain only to the contract's parties. The Contract, and amendment, is specific in that water supplied to the Company would be used exclusively for wetland habitat management on Fish & Wildlife Service (FWS) approved conservation easement lands. In addition, the Contract requires the Company to prepare a Wetland Habitat Management Plan (See Sub-Article 15[A]), and to provide it to Reclamation and FWS for approval prior to delivery of any water.

Response to Comment DC-2: The project description and alternatives analysis address the purpose and need for the proposed action, which is the Contract for Temporary Level 4 Water Supply with the Company. As stated on page 1 of the Draft EA, “the proposed temporary action’s primary purpose would be to deliver water to enhance the Company’s migratory waterfowl habitat and a secondary purpose would be to maintain wetlands linking the Sacramento National Wildlife Refuge and the Colusa Basin Drain.” Page 1 of the Draft EA goes on to state that “the need for the proposed action arises from the Company’s loss of its prior water supply from Provident Irrigation District.”

If the Interagency Refuge Water Management Team (IRWMT) opts to transfer the 3,000 AF of water rather than allow the Company to use it on their conservation easement lands, those potential environmental impacts have already been addressed in the CVPIA Programmatic EIS, (October 1999) and Final EA/IS for the Refuge Water Supply Long-term Water Supply Agreements for the Sacramento River, San Joaquin River and Tulare Lake Basins (January 2001). These Long-term Water Supply Agreements EA/ISs cover delivery of all Level 2 water supplies and the acquisition and delivery of up to the full Level 4 amounts allocated to all CVPIA refuges.

In response to the footnote portion of this comment, the proposed action is being undertaken pursuant to Section 3406(d), not Section 3405(a) as erroneously referenced in the Draft EA.

Response to Comment DC-3: In accordance with Reclamation’s NEPA Guidelines, 40 CFR 1502.14, 516 DM 4.10.A.(2), CEQ’s Forty Most Asked Questions, Number 2 and CEQ Guidance Memorandum issued August 10, 1983, “*Reclamation must determine what other alternatives should be considered in the NEPA document and whether these alternatives are ‘reasonable’, given the purpose of the action*”. CEQ’s Forty Most Asked Questions goes on to state that “*Reasonable alternatives include those that are **practical or feasible** from the technical or economic standpoint and using common sense rather than simply **desirable** from the standpoint of the applicant*”. In later guidance (August 1983 guidance memorandum), CEQ concludes “*it is reasonable for the Federal agency to limit the range of alternatives to those...which are considered feasible, given the applicant’s stated goals. The agency should consider the applicants purposes and needs and the common sense realities of a given situation in the development of alternatives*”. Also see Response to Comment DC-2 above describing the purpose and need of the Contract and thus the NEPA document analyzing potential environmental impacts relating to the proposed action (the Contract to provide temporary water supply with the Company).

The following further explains the reasons why north to south water transfers was determined not to be best use of the water:

“Reclamation delivers Level 2 water to the SJV [San Joaquin Valley] refuges via Jones PP [Pumping Plant] concurrent with Project water deliveries to CVP [Central Valley Project] agricultural and Municipal and Industrial (M&I) contractors. Level 2 water and Project water both come from the annual CVP yield and receive high pumping priority at the Jones PP. Incremental Level 4 water, on the other hand, is purchased water from usually non-CVP sources. If such water is purchased from upstream of the Delta sources (including San Joaquin River basin sellers), it has a considerably lower pumping priority at the Jones PP than Level 2 water or CVP Project water. Incremental Level 4 water is also purchased from other San Joaquin Valley sources that do not require pumping, because these sources are within the CVP Jones PP and SWP [State Water Project] Banks export service areas.

Providing Incremental Level 4 water purchased from upstream of the Delta sources to SJV refuges is challenging for the following reasons:

1. Presently, when pumping capacity is available at the Jones PP, such capacity is first allotted to the pumping of CVP water to the agricultural and M&I water contractors and Level 2 water to the SJV refuges, then to CVP contractors’ other water transfers, and eventually to Incremental Level 4 water and other non-CVP water transfers. Therefore, Jones PP’s pumping priorities limit the amount of capacity available, if any, for pumping Incremental Level 4 water.
2. Per the Biological Opinions (BOs) on the Coordinated Operations of the CVP and SWP, the ‘window’ for ‘north’ to ‘south’ water transfers across the Delta is limited to July through September only. To do so otherwise would likely require re-consulting with the Service and NOAA Fisheries regarding the transfer under the BOs.
3. For all ‘north’ to ‘south’ water transfers, the Delta must be in a ‘balanced’ state, as declared by Reclamation and DWR under the Coordination Operations Agreement. This condition typically exists during the summer months and may continue into the fall, depending on hydrology and Delta conditions.
4. Even if the Delta is in ‘balance’ and pumping capacity is available, ‘north’ to ‘south’ water transfers may still be subject to SWRCB [State Water Resources Control Board] Delta water quality regulations that may prevent the transfer of Incremental Level 4 water purchased upstream of the Delta.
5. All ‘north’ to ‘south’ water transfers are subject to an assumed 20 percent loss factor to preserve Delta water quality (commonly referred to as Carriage Water) as required by the SWRCB. The actual amount of Carriage Water required varies, depending on hydrology and Delta water quality conditions during the transfer. Therefore, 600 AF of the 3,000 AF would not be delivered to a SJV refuge, but allowed to flow through the Delta and into San Francisco Bay.”

Response to Comment DC-4: Reclamation determined that the ‘best use’ of the water meets the purpose and need of the proposed action which is to provide a temporary supply of water to the Company, as authorized by Section 3406(d) of the CVPIA. In CVPIA, “...units of the National Wildlife Refuge System” (Section 3406[d]) is stated, and the Service considers approved private conservation easement lands as a “unit” of this system.

Response to Comment DC-5: See Response to Comments DC-1 and DC-2.

Response to Comment DC-6: See Response to Comment DC-2.

Response to Comment DC-7: According to the Company’s attorneys in a letter dated April 16, 2010, the Company is a California corporation formed by that certain Amendment of Articles of Incorporation filed with the Secretary of State of the State of California on September 12, 1979. In addition, the letter states that the Company is not a public agency within the meaning of the California Environmental Quality Act and is, therefore, not required to comply with its provisions before entering into contract with Reclamation.

Response to Comment DC-8: The Draft EA/FONSI addressed the intended purpose and need of the Contract which is to provide a temporary supply of water to the Company for wetlands management. As indicated in Response to Comment DC-2 above, providing water to other CVPIA refuges has been analyzed in previous NEPA documents.

2. Paul Forsberg (California Department of Fish and Game)

Response to Comment PF-1: Suggested editorial change incorporated into Final EA (page 4).

Response to Comment PF-2: Suggested changes incorporated into Final EA (page 5). Regarding the comment that Delevan’s Incremental Level 4 water, the refuge has received between 1,500 and 7,900 AF of Incremental Level 4 water annually. Prior to 2006, up to 5,300 AF of Incremental Level 4 water was delivered to the Delevan NWR with water that Reclamation permanently purchased from the Proberta, Thomes Creek and Corning Water Districts (PTCD Purchase) in 1998. In three of the four water years since the Anderson Cottonwood Irrigation District (ACID) Purchase, the Delevan NWR has received some of the ACID Purchase water in combination with the PTCD Purchase water for Incremental Level 4 deliveries.

Response to Comment PF-3: Suggested editorial changes incorporated into Final EA (page 5).

Response to Comment PF-4: See Response to Comment DC-2.

Response to Comment PF-5: The Company is required to submit a Wetlands Habitat Management Plan to Reclamation prior to water delivery to ensure that the water will be used on the wetlands within the conservation easement habitat lands only. The Company is able to ensure the delivery and application of the water to these lands through an array of control structures. The water would not be delivered to the Company's cultivated rice and pasture lands and non-conservation easement parcels (See Response to Comment DA-3 below). The Company uses the terms 'natural wetlands' or 'wetlands' loosely in its reference to the Service's approved conservation easement lands.

Response to Comment PF-6: See Response to Comment DC-1.

3. Don Anderson (Redding, CA)

Response to Comment DA-1: Incremental Level 4 Water is defined as the difference between historic annual average water deliveries (Level 2) to refuges, and the refuge water supplies required to achieve optimum wetlands and wildlife habitat management (Level 4). Level 2 Refuge Water Supplies refer to the historical annual average amount of water these refuges received between 1977 and 1984. Level 4 Refuge Water Supply is the annual amount of water needed for full development of the refuges based upon management goals developed in the 1980s.

Response to Comment DA-2: The Company's easement lands receive both surface water and groundwater. Prior to 2005, the Company received up to 5,000 AF of reliable surface water supplies (Central Valley Project [CVP] water) from PID for delivery to the conservation easement lands within the Company's service area. PID's CVP water was provided to the Company during summer and fall in preparation for and to coincide with the fall bird migration period. However, PID's CVP surface water supply is no longer available to the Company, because the consumptive use of water has increased within PID due to changes made in farming practices. The Company also receives surface water supplies from other sources for delivery to the easement lands depending on availability, including regional rice tail water.

Response to Comment DA-3: There are 3,645 acres of easement lands within the Willow Creek Mutual Water Company boundary, along with an approximate 1,005 acres of natural habitat lands and 2,350 acres of agricultural lands.

- (1) How long have the WCL conservation easements been in place? This comment is not relevant to the EA and the requested information is unknown to Reclamation.
- (2) What was the purchase price paid by USFWS for conservation easements? This comment is not relevant to the EA.
- (3) See Response to Comment DA-2.
- (4) See Response to Comment DA-2.
- (5) USFWS website states that landowners are required to maintain the easement land in wetlands. Another USFWS website states that the landowners are not required to flood their wetland properties, but that USFWS reserves the right to flood the properties at the government's expense. Is this action taken voluntarily by the Company or is the USFWS exercising its right to flood these properties? The

- Company has a need for the 3,000 acre-feet of water for use on its conservation easement lands to support waterfowl habitat development; and Reclamation is taking the action to temporarily provide this water to the Company. The Company is not volunteering nor is the Service exercising its right with respect to flooding the conservation easement lands. Under the Contract, as amended, there is no monetary exchange. Reclamation is temporarily providing the water to the Company at no cost.
- (6) The 3,000 AF was originally purchased from ACID approximately 4 or 5 years ago when their water service contract with Reclamation for CVP water was being renewed. This was a one-time only purchase (at the time when the water service agreement was signed) and ACID is required to provide this water to the Refuge Water Supply Program every year thereafter. The water can only be provided to the Company, or the refuges, within ACID's water service contract time period of March through October.
 - (7) There is no charge to the Company. This water is being provided at no cost.
 - (8) Reclamation purchased this water for the CVPIA refuges, particularly for Gray Lodge upon completion of water conveyance facilities at that refuge (approximately 2013).

Response to Comment DA-4: See Response to Comment DA-2. The Company does get some surface water from time to time from Provident Irrigation District as well as from other sources, including rice tail water, depending on availability.

Response to Comment DA-5: See Response to Comment DA-2.

Response to Comment DA-6: Section 3.3.2, Environmental Consequences for Biological Resources, states that "the Proposed Action would be beneficial to the area's biological resources particularly migratory waterfowl and GGS (although it is recognized that late summer water is not as beneficial as spring water).

Response to Comment DA-7: See Response to Comment PF-2 (statement was deleted).

Response to Comment DA-8: See Response to Comment PF-2 (statement was deleted).

Response to Comment DA-9: See Response to Comment DA-2.

Response to Comment DA-10: See Response to Comment DC-2.

Response to Comment DA-11: See Response to Comment DC-4.

Response to Comment DA-12: See Response to Comment DC-2, DC-4 and the Draft EA regarding other options for use of the water.

Response to Comment DA-13: Why would Reclamation take the action of purchasing the water for the refuges, then redirect this water through a transfer to non-refuge conservation easement lands, when there are refuges in need of water supplies? See Response to Comment DC-3 and also Section 2.3 in the Final EA.

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201
FAX: (916) 444-6209

dcardozo@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660
FAX: (650) 589-5062

DANIEL L. CARDOZO
THOMAS A. ENSLOW
TANYA A. GULESSERIAN
JASON W. HOLDER
MARC D. JOSEPH
ELIZABETH KLEBANER
RACHAEL E. KOSS
LOULENA A. MILES
ROBYN C. PURCHIA

FELLOW
AARON G. EZROJ

OF COUNSEL
THOMAS R. ADAMS
ANN BROADWELL
GLORIA D. SMITH

June 11, 2010

VIA U.S. MAIL, FACSIMILE AND EMAIL

Mr. Timothy G. Rust
Fish and Wildlife Program Manager
Bureau of Reclamation
United States Dept. of Interior
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898
Facsimile: (916) 978-5290
Email: trust@usbr.gov

Ms. Shelly Hatleberg
Bureau of Reclamation
United States Dept. of Interior
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825-1898
Facsimile: (916) 978-5055
Email: shatleberg@usbr.gov

Re: Temporary Supply of CVP Water to Willow Creek Mutual Water Company; Amendment No. 1 to Contract No. 09-WC-20-3941; and Draft EA/FONSI Temporary Water Supply to Willow Creek Mutual Water Company for Wetlands Management May 2010

Dear Mr. Rust and Ms. Hatleberg:

On December 3, 2009, we wrote on behalf of the Grassland Water District (the "District") to request that the Bureau of Reclamation ("Reclamation") rescind both the Contract between the United States and Willow Creek Mutual Water

DC-1

1124-606d

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 2

Company Providing for Temporary Water Service from the Central Valley Project (the "Contract") and the Environmental Assessment and Finding of No Significant Impact ("EA/FONSI") prepared to support the Contract approval. The request was made on the grounds that the Contract violated Reclamation's obligations under the Central Valley Project Improvement Act ("CVPIA" or the "Act"), and on the grounds that the EA/FONSI prepared to support the Contract failed to comply with the requirements of the National Environmental Protection Act ("NEPA"). We also noted that the Contract appeared to violate the California Environmental Quality Act ("CEQA").

On January 7, 2010, you provided a written response to our letter informing the District that Reclamation had decided to address the concerns raised by the District by revising the Contract as well as the EA/FONSI. Your letter also indicated that Reclamation would work with the Willow Creek Mutual Water Company ("Willow Creek") to address any required CEQA compliance. Although your letter stated that a revised draft EA/FONSI would be made available for public review within two months, Reclamation released the revised draft EA/FONSI on June 2, 2010.

Reclamation's notice informed the public of the availability of the draft EA/FONSI and also stated that "Reclamation will enter into a temporary water service contract with [Willow Creek] to provide up to 3,000 acre-feet of water per year for wetland habitat management." The District requested a copy of the proposed contract and was provided with "Amendment No. 1 to Contract between the United States and Willow Creek Mutual Water Company Providing for Temporary Water Service from the Central Valley Project." We refer in this letter to the original Contract together with the revisions made by Amendment No. 1 as the "Contract."

While the District was initially encouraged by Reclamation's decision to revise the Contract and EA/FONSI in response to the concerns expressed in our letter, after a review of the revised Contract and the reissued draft EA/FONSI, we do not believe that the issues we raised have been substantively addressed, and we remain concerned about Reclamation proceeding with the project in the manner proposed. The District had requested that the Contract be revised to reflect a one-year term, that the Interagency Refuge Water Management Team be given a clear and meaningful role in considering allocation of the water to a CVPIA-eligible

DC-1

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 3

refuge, and that an EA be prepared in full conformance with the requirements of NEPA, particularly in considering alternative refuge delivery options. These requests have not been adequately responded to in a manner that reflects the District's discussions with Reclamation, or are addressed in a way that fails to fully comply with the requirements of NEPA or the letter and spirit of the CVPIA.

The District has attempted to cooperate with Reclamation in this matter and stands ready to work toward a collaborative solution. Nevertheless, as the contractor for a CVPIA-designated refuge that is still not receiving its full, legally-mandated water supply eighteen years after enactment of the mandate, the District strongly believes that every effort must be made to direct precious refuge water supplies to the intended beneficiaries before that water is allocated to entities not authorized by the statute to receive CVPIA supplies. We do not believe that the structure of the proposed Contract or the accompanying analysis in the EA/FONSI reflect a good faith effort to explore alternative CVPIA-authorized allocations.

I. THE CONTRACT CONTINUES TO VIOLATE THE CVPIA

A. The Contract Commits CVPIA Refuge Water Supplies to Non-Eligible Lands

The Contract continues to violate federal law by providing CVPIA refuge water supplies to lands not eligible to receive such water under the Act, even though the refuge lands expressly designated to receive such water supplies under the Act have not been provided their full Level 2 and Level 4 water supply. As discussed in detail in our December 3, 2009 letter, Reclamation may not provide CVPIA refuge water supplies to non-CVPIA refuges, unless it has taken all reasonable steps to make such water available to a CVPIA-eligible refuge. The Contract fails to guarantee that such steps will be taken.

The Contract's recitals declare that the United States has purchased water from a willing seller in order to make such water available for Level 4 refuge water deliveries under CVPIA section 3406(d)(2). The lands within the Willow Creek-Lurline Wildlife Management Area are not designated in CVPIA section 3406(d)(2) as lands entitled to receive the refuge water supplies authorized and required to be made available by the Act. The revised Contract now states that the U.S. Fish and Wildlife Service ("Service") "*considers* the Contractor's Easement Lands as a unit of

DC-1

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 4

the National Wildlife Refuge System (“NWRS”) in the Central Valley of California and subject to its laws and regulations, and thereby supporting the objectives of Central Valley Joint Venture . . . pursuant to CVPIA Section 3406(d).” (Amendment No. 1, Contract No. 09-WC-20-3941, p. 3, emphasis added.) To clarify, Willow Creek, as is the case with other easement areas, is part of a system of lands within a Fish and Wildlife Service easement acquisition boundary, yet is not a “unit” of the NWRS. Refuge “units” typically refer to distinct public refuge areas within an umbrella NWRS complex. Willow Creek is not a unit of the NWRS because it is not publically owned or managed, not accessible by the general public, and not a designated CVPIA wetland area.

Whether or not the Service “considers” the lands served by Willow Creek to be units of the NWRS, it would not change the fact that those lands are not eligible to receive refuge water pursuant to section 3406(d). The National Wildlife Refuges authorized to receive water under the CVPIA are identified in the Act as the specific refuges and habitat areas set forth in Reclamation’s 1989 Refuge Water Supply Report and 1989 San Joaquin Basin Action Plan/Kesterson Mitigation Action Plan Report. (§ 3406(d)(1) and (2).) The lands served by Willow Creek are not among the nineteen refuges and habitat areas referenced by these documents and, thus, are not eligible to receive 3406(d) water supplies. Reclamation presumably does not intend to argue to the contrary since the Contract later states that Reclamation will consider whether the water supply that is the subject of the Willow Creek Contract could be applied instead to “a CVPIA-designated wildlife Refuge pursuant to Section 3406(d).” (*Id.*, p. 4.)

DC-1

B. The Contract Does Not Guarantee that All Reasonable Steps Will Be Taken to Make the Contract Water Available to a CVPIA-Eligible Refuge

As we stated in our December 3, 2009 letter, the District recognizes that there may be temporary physical limitations in the ability to deliver acquired water supplies to a particular refuge. The potential for such limitations, however, does not relieve Reclamation from its duty to allocate all available refuge water to CVPIA-eligible refuge lands that have not received their full Level 2 and Level 4 supply before providing such water to non-eligible lands. Where a particular refuge is unable to accept delivery of its CVPIA water supply due to infrastructure constraints, Reclamation must use its best efforts to explore all reasonable

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 5

opportunities for delivery of the available water to other eligible refuge lands that have not received their full Level 2 and Level 4 water supplies. The District believes that additional Contract revisions are necessary in order to establish a process that will enable Reclamation to take advantage of all potential opportunities to make the water available to CVPIA-eligible refuges.

1. The Contract Should Reflect Consultation and Collaboration with the Interagency Refuge Water Management Team in Assessing and Determining Opportunities for Use of the Water on CVPIA-Eligible Refuges

In our earlier letter, we noted that under the existing refuge water supply contracts, whenever the full Level 2 and Level 4 refuge supplies are not available because of reductions due to dry year shortages, the remaining refuge water supplies may be pooled for allocation among the eligible refuge lands. The contracts provide for the pooled supplies to be “collaboratively allocate[d]” by the Interagency Refuge Water Management Team (“IRWMT”) “to meet the highest priority needs of the Refuge(s).” (See Contract Between the United States and Grassland Water District for Water Supply to Lands Within the Grassland Resource Conservation District, Contract No. 01-WC-20-1754, January 19, 2001, pp. 13-14.)

DC-1

In this case, the acquired Incremental Level 4 refuge water currently undeliverable to Gray Lodge is equivalent to the pooled water supplies provided for under the refuge water supply contracts. In order to carry out its refuge water supply obligations consistent with the Act, Reclamation should collaborate with the IRWMT to explore all potential opportunities for reallocation of the Level 4 water supply undeliverable to Gray Lodge to other CVPIA-eligible refuge lands not currently receiving their full Level 2 and Level 4 water supply.

Although the EA/FONSI states that the IRWMT “would have the opportunity to assess whether or not the 3,000 AF of water could be applied to a CVPIA wildlife refuge,” the Contract itself makes no reference to IRWMT involvement. The precise role of the IRWMT in the determination of alternative delivery options for the Contract water is also left undefined. The District, as an IRWMT member, believes that an explicit reference in the Contract and a better definition of the role of the

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 6

IRWMT would provide greater certainty and avoid the potential for future disputes regarding the process.

2. The Determination of Opportunities for Use of the Water on CVPIA-Eligible Refuges Should Be Made by March 1 Instead of June 1

The June 1 deadline set forth in the Revised Contract for making a final determination of whether the 3,000 AF of water could be delivered to a CVPIA wildlife refuge needs to be clarified to take into account the IRWMT's need to commence evaluation of spring/summer supplies by the beginning of the water year, March 1, or earlier. A specified timetable for consulting with the IRWMT between March and June should be set forth in order to provide sufficient time to ensure meaningful evaluation of the ability to convey this water and sufficient time to allow for completion of any necessary environmental documentation that may be required to transfer the water. Per refuge water contracts, the Reclamation contracting officer is required to provide an estimate of how much Level 4 will be available in the upcoming water year by February 20. It is therefore consistent with Reclamation's contractual obligations to the CVPIA refuges to take into consideration this potential supply of water for existing refuge needs by no later than the beginning of the water year.

In addition, the Contract should be revised to require transfer of a like-amount of water to eligible refuges later in the year if certain specified circumstances arise. While we have been, and remain, agreeable to the offer to make this water available to Willow Creek by June 1 should the water not be available to eligible refuges at that time, a like amount of water should be made available to the refuges later in the year. Reclamation should require that if: (i) a designated refuge requires additional water later in the water year, and (ii) conveyance capacity is or becomes available, then the same amount of water transferred to Willow Creek earlier in the year pursuant to the revised Contract would be delivered to the designated refuge either from the conserved supply of an existing CVPIA-designated refuge or from water purchased to replace the transferred water. This would serve the dual purpose of allowing Reclamation to maintain a clearly defined cutoff date to make a decision on the use of the water by June 1, yet would assure that eligible CVPIA refuges are not denied primary access to these water supplies at any time during the water year.

DC-1

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 7

In any event, given that the revised Contract was not even released for public review until after June 1, and given that there has been no consultation with the IRWMT as described by the EA, we assume that the examination of delivery options to a CVPIA-eligible refuge in this water year has not yet occurred. The District looks forward to working with Reclamation through the IRWMT in conducting that assessment. If it is Reclamation's position that a determination has been made to allocate this year's water to Willow Creek, that determination would not conform to the requirements set forth in the EA itself. In such case, we respectfully request that the decision be reopened and that Reclamation follow the process described in the EA, and as further refined in this letter.

3. Contract Language Should Be Revised

In order to implement the two Contract changes discussed above, we propose the following revisions to the new Sub-Article 3(f) added by Amendment No. 1 to the Contract:

"For each year under this Contract and prior to making available the Incremental Level 4 Water to the Contractor, Reclamation, via the Contracting Officer, ~~retains the right to~~ shall assess in collaboration with the Interagency Refuge Water Management Team whether or not the Incremental Level 4 Water can be used for a CVPIA-designated wildlife Refuge pursuant to Section 3406(d). The Contracting Officer and the Interagency Refuge Water Management Team shall conduct this assessment by March 1 of each year. If at that time the Contracting Officer and the Interagency Refuge Water Management Team jointly determine that the Incremental Level 4 Water cannot be used for a CVPIA-designated wildlife Refuge, the Contracting Officer and the Interagency Refuge Water Management Team shall reconvene monthly in April and May to reassess whether any changes in conditions would allow the Incremental Level 4 Water to be used for a CVPIA-designated wildlife Refuge. By June 1 of each year, Reclamation shall make this a final determination jointly with the Interagency Refuge Water Management Team and notify the Contactor by June 1 of each year."

DC-1

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 8

Additional revisions to the Contract will also be required to implement the above proposals, including changes to the timing of the schedule required to be submitted by the Contractor in the new Sub-Article 4(b).

C. The Contract Continues to Create a Potential that Refuge Water Supplies Will Be Utilized for Cultivated Agriculture in Violation of the CVPIA

In our December 3, 2009 letter, we noted that the lands served by the Willow Creek Mutual Water Company comprise a mosaic of cultivated agriculture, including rice and other crops, as well as lands managed for wetland habitat. We also indicated that it was our understanding that the Willow Creek water delivery system may not allow for assurance that the water supplies furnished by Reclamation would be exclusively used for wetland habitat management and that such water could be applied to irrigated agricultural lands in violation of the CVPIA. Neither the revised Contract nor the revised draft EA/FONSI responds to this point.

DC-1

D. Reclamation Failed to Comply with Mandatory Public Participation Requirements in Proposing and Executing the Contract

Reclamation has adopted regulations setting forth various noticing and public participation requirements that apply to consideration and execution of certain water contracts. (43 C.F.R. § 426.22.) These public participation provisions have also been incorporated into mandatory policies in Reclamation Manual Policy PEC P06, Section 3(B), Public Participation. We do not believe that the Contract at issue was noticed or considered in accordance with these requirements. The failure to follow these mandatory policies is unfortunate since many of the issues raised in this letter and the District's prior letter could have been addressed and resolved in the public process.

II. THE REVISED DRAFT EA/FONSI PREPARED TO SUPPORT THE CONTRACT CONTINUES TO VIOLATE NEPA

In our December 3, 2009 letter, we argued that the EA/FONSI violated NEPA because it provided an inaccurate and incomplete project description, failed to

DC-2

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 9

consider short-term impacts on CVPIA refuge lands and failed to present a meaningful assessment of alternatives. We believe the project description and impact analysis of the revised draft EA/FONSI continue to fall short of NEPA legal standards, and we hereby resubmit our original comments on those issues.¹ The most glaring deficiency in the revised draft EA/FONSI relates to the discussion of alternatives.

DC-2

In our earlier comments, we noted that the EA/FONSI failed to evaluate the reasonable alternative of delivering the Contract water to CVPIA-eligible refuges that had not received their full Level 2 and Level 4 water supplies. The revised draft EA/FONSI continues to identify the same two alternatives analyzed in the original EA/FONSI, the Preferred Alternative and the No Action Alternative. While the revised draft EA/FONSI includes a brief new discussion of water delivery options, it falls far short of the standards required for a legally adequate analysis.

An EA is legally inadequate if it fails to “rigorously explore and objectively evaluate all reasonable alternatives.” (*Center for Biological Diversity v. National Highway Traffic Safety Administration* (2008) 538 F.3d 1172, 1217, quoting 40 C.F.R. § 1502.14(a).) “Although an agency’s obligation to consider alternatives under an EA is a lesser one than under an EIS, NEPA requires that alternatives be given full and meaningful consideration, whether the agency prepares an EA or EIS.” (*Id.*, internal quotation marks and citations omitted.)

As a San Joaquin Valley CVPIA refuge, the District was particularly interested in reviewing the revised draft EA/FONSI’s discussion of Reclamation’s evaluation of the alternative of delivering the water supply at issue to San Joaquin Valley refuges. Unfortunately, this discussion exemplifies the inadequacy of the alternatives analysis.

DC-3

The entire discussion consists of five sentences. The first sentence lists the San Joaquin Valley refuges. The second sentence notes that the refuges are located in the Central Valley Project and State Water Project export areas served by the

¹ The EA introduces additional confusion by stating that the proposed action is being undertaken pursuant to Section 3405(a). CVPIA Section 3405(a) relates to authorization for water transfers. Is Reclamation now claiming that this action is supported by the water transfer authority of the CVPIA? If so, then a discussion of that authority and compliance with the requirements of 3405 is required.

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 10

State and Federal pumps. The third and fourth sentences note that three refuges could not receive the Contract water because of inadequate conveyance facilities. Only the fifth sentence comes close to anything that might be described as an assessment: *“Because of the uncertainties involved with the above reasons regarding ‘north’ to ‘south’ water transfers, providing the 3,000 AF of purchased Incremental Level 4 water to the SJV refuges was determined not to be the best use of the water.”* (Draft Environmental Assessment, May 2010, p. 6, emphasis added.)

A single, conclusory and cryptic sentence does not constitute the kind of rigorous and objective exploration or full and meaningful consideration of an alternative required by NEPA. (*Center for Biological Diversity v. National Highway Traffic Safety Administration*, supra, p. 1217.) It is not even clear what the sentence means. The EA refers to “the uncertainties involved in the above reasons,” even though the sentence was not preceded by any discussion or identification of “reasons,” other than conveyance limitations due to inadequate infrastructure. If this oblique reference was intended to suggest that allocation to a San Joaquin Valley refuge is not feasible due to pumping restrictions, NEPA requires an actual analysis supported by facts and evidence before the alternative may be dismissed.

DC-3

Finally, the sentence states that Reclamation determined that allocation of the water to a CVPIA-designated San Joaquin Valley refuge was not the “best use” of the water. This statement calls into question the entire review. The question is not what is the “best use” of the water, but whether there is any feasible means of directing that water to a CVPIA-eligible refuge. If there is, then Congress has already determined the best use of the water and mandated allocation to the refuges set forth in the statute. The EA’s conclusion regarding “best use” of the water serves only to reinforce the District’s concerns expressed in this letter with respect to the process for the annual decision on potential reallocation of the Contract water.

DC-4

The record supporting the Contract and EA/FONSI must show that Reclamation conducted a thorough and rigorous examination of all options available to direct the Contract water to a CVPIA refuge in the current water year, and that a process has been established to ensure such examination in each subsequent year. That examination should be conducted and the determination made in collaboration with the IRWMT. The revised documents present no meaningful evidence to support a conclusion that the water could not be used on an eligible refuge.

DC-5

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 11

D. A New EA/FONSI or EIS Must Be Prepared

Because of the legal deficiencies identified above, particularly the failure to conduct a meaningful review of alternative water delivery options, the EA/FONSI must be rescinded and a new EA/FONSI or EIS must be prepared. (*Center For Biological Diversity, supra*, 538 F.3d at 1225 (when an agency has prepared a deficient EA or otherwise failed to comply with NEPA, the court will determine whether to require the agency to prepare an EIS or remand for preparation of a new EA); *San Luis Obispo Mothers for Peace v. Nuclear Regulatory Commission* (2006) 449 F.3d 1016, 1024, 1031, 1035.)

DC-6

III. A CONTRACT WITH A CALIFORNIA PUBLIC AGENCY MUST COMPLY WITH CEQA

In our December 3, 2009 letter, we noted that the Contract described the Willow Creek Mutual Water Company as a California public agency. We indicated that we had no independent knowledge of the organizational status of this entity, but that if the recital was correct, Willow Creek would be required to comply with CEQA prior to entering into the Contract. An agency action is subject to CEQA if it: (1) is a discretionary action undertaken by a public agency, and (2) may cause either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. (Pub. Resources Code §§ 21065, 21080; Cal. Code Regs., tit. 14 (“CEQA Guidelines”) §§ 15061, 15357, 15358, 15378.)

DC-7

Our letter also stated that if the recitals of the Contract were not correct, and the Willow Creek Mutual Water Company is not a California public agency, then the Contract should be corrected in order to inform the public of the true identity of the entity receiving the refuge water supplies. The revised Contract continues to describe Willow Creek as “a public agency of the state of California, duly organized, existing, and acting pursuant to the laws thereof” (Contract, p. 1.), yet no further information regarding CEQA compliance has been provided. The record thus misleads the public and public decision makers regarding the nature of the proposed action, and the comments of our December 3, 2009 letter remain valid.

Mr. Timothy G. Rust
Ms. Shelly Hatleberg
Bureau of Reclamation
June 14, 2010
Page 12

IV. CONCLUSION

As set forth above, the Contract continues to violate federal law and must be rescinded and set aside. (See *Pacific Northwest Generating Cooperative v. Dept. of Energy* (2009) 580 F.3d 792, 823 (contracts that are inconsistent with an agency's federal statutory authority are invalid).) In addition, the EA/FONSI prepared for the Contract fails to comply with the requirements of NEPA and must also be rescinded and set aside. The Contract also appears, on its face, to be void due to the failure to comply with CEQA.

Reclamation's continuing failure to comply with its legal obligations to acquire and deliver refuge water supplies in accordance with the CVPIA has severely undermined long-term management of critical wetland habitat and precluded realization of CVPIA objectives. For this reason, every Reclamation decision that impacts refuge water supplies is critical. The District stands ready to work with Reclamation in a cooperative fashion to address the specific issues raised in this letter regarding the revised Contract, as well as the broader issues involved in securing a dependable refuge water supply in accordance with the longstanding mandates of the CPVIA.

DC-8

Sincerely,


Daniel L. Cardozo

DLC:cnh
Attachment

cc: Don Glaser, USBR Regional Manager
Pablo Arroyave, USBR Deputy Regional Manager
Hamilton Candee, Altshuler Berzon LLP

Shelly Hatleberg
Bureau of Reclamation
2800 Cottage Way
Sacramento, CA 95825

RE: Department of Fish and Game Comments to Draft Environmental Assessment and Finding of No Significant Impact for Temporary Supply of Incremental Level 4 Water to Willow Creek Mutual Water Company for Wetlands Management.

The following comments are submitted on behalf of the Department of Fish and Game (Department) in response to the Draft Environmental Assessment and Finding of No Significant Impact (Draft EA/FONSI) for Temporary Supply of Incremental Level 4 Water to Willow Creek Mutual Water Company for Wetlands Management. The Draft EA/FONSI is dated May 2010 and was released for review June 2, 2010 with a request for comments by close of business June 15, 2010.

The Department is providing comments as a Contractor for Central Valley Project water, and as a member of the Interagency Refuge Water Management Team as defined in existing refuge water supply contracts between the Bureau of Reclamation (Reclamation) and the Department. Some comments are provided in ~~strikeout~~ and **highlight** to provide clarity.

2.2 Proposed Action Alternative

Anderson Cottonwood Irrigation District should be identified as a Sacramento River Settlement Contractor as opposed to a Central Valley Project water service contractor.

PF-1

2.3 Water Delivery Options Considered But Not Selected

1. Provide up to 3,000 AF of Incremental Level 4 Water to the Sacramento, Colusa and Delevan refuges. These refuges are part of the Sacramento NWR Complex. They have the water conveyance infrastructure in place to receive their respective Level 4 (optimum) water deliveries. In all years, with the possible exception of very dry years, these refuges receive their full Level 2 ~~water deliveries and in some years even have 'extra' Level 2 water available that is reallocated~~ **supplies, and are at times able to reallocate some of these supplies, through conservation actions,** to other water short CVPIA refuges. The Delevan refuge also receives annually up to 6 TAF of Incremental Level 4 water that Reclamation permanently purchased from the ~~Corning Water District in the 1990s~~ **Proberta, Thomes Creek, and Corning water districts in 1998 (comment - I do not believe Delevan has ever received this much Incremental Level 4 water - please confirm with either Dale Garrison at FWS, or Sonya Nechanicky in the Bureau's refuge water conveyance program).** ~~Since these Sacramento NWRC refuges are 'water rich' in comparison to south-of-Delta CVPIA refuges, it was determined that they were not in critical need of additional water.~~ **(comment - I recommend we use language which states that Incremental Level 4 water acquisition priority, based on the percentage of Incremental Level 4 which comprises overall Level 4 supplies - the greater the**

PF-2

percentage of IL4 relative to overall level 4 supply, the higher the acquisition priority - is lower north of Delta relative to south of delta needs).

3. Provide up to 3,000 AF of Incremental Level 4 water to Gray Lodge Wildlife Area. Gray Lodge Wildlife Area (WA) is a state refuge under CVPIA and is located north of the Sutter Buttes and west of Marysville in the Sacramento Valley. Similar to the Sutter NWR, it too lacks adequate **external** water conveyance infrastructure to receive its full Level 2 and **Incremental** Level 4 water deliveries. Because this refuge does not **currently** have the necessary **external** conveyance facilities, the 3,000 AF of Incremental Level 4 that is available could not be provided to it **at this time**. This delivery option is different from the previous two in that Reclamation ~~and the Service are~~ is currently undertaking conveyance construction with an expected target completion date of 2013. **It is the intention to use the subject 3,000 AF purchased from Anderson Cottonwood Irrigation District and this Incremental Level 4 water would most likely be utilized annually here at Gray Lodger Wildlife Area starting** once construction is complete.

PF-3

4. Provide up to 3,000 AF of Incremental Level 4 water to San Joaquin Valley CVPIA refuges (SJV refuges).

The Department recommends this section receive an alternative analysis review. A more complete analysis here will fully identify potential options south of the Delta where the greatest programmatic need for Incremental Level 4 water acquisition exists. While we acknowledge there are challenges and limitations to north-to south water transfers, we believe without this analysis, it would be premature to conclude that it would be infeasible to provide the subject 3,000 AF of purchased Incremental Level 4 water to San Joaquin Valley Refuges.

PF-4

3.2.1 Affected Environment

It is stated the Company's service area is nearly 40 percent rice and 60 percent natural wetlands. If water is delivered to the wetland areas, are there assurances the water can and will be isolated from the rice acreage? Also, it is not clear what the term "natural wetland" means. It is assumed these are managed wetlands with water control structures. Please clarify.

PF-5

ADDITIONAL COMMENTS TO PROPOSED AMENDMENT NO. 1 TO CONTRACT BETWEEN THE UNITED STATES AND WILLOW CREEK MUTUAL WATER COMPANY PROVIDING FOR TEMPORARY WATER SERVICE FROM THE CENTRAL VALLEY PROJECT

The following related comments are being provided to the undated proposed Amendment No.1:

PF-6

The Draft EA/FONSI identifies the role of the IRWMT regarding use and application of the subject 3,000 AF of water on page 4 as follows: "Although the current water service contract with the Company would be for three years, each year the Interagency Refuge

Water Management Team would have the opportunity to assess whether or not the 3,000 AF of water could be applied to a CVPIA wildlife refuge. If the water is not needed for one of these refuges, then the water would be provided to the Company for use only on its conservation easement lands."

Amendment No. 1 does not currently identify the role of the IRWMT. Article 7, which adds new Sub-Article 3(f), should be revised to incorporate IRWMT participation in the allocation of the water to CVPIA-eligible refuges. Identification of Reclamation consultation and collaboration with the IRWMT in exploring opportunities for use of acquired water, and the identification of this role in the contract will provide clarity to the process.

Thank you for the opportunity to comment on the subject Draft EA/FONSI. The Department looks forward to further participation and collaboration with Reclamation regarding acquisition of Incremental level 4 water supplies in the Central Valley. Please contact me with any questions you may have regarding these comments. I can be reached at telephone (916) 323-7215, or electronic mail at pforsber@dfg.ca.gov.

PF-6

June 14, 2010

Ms. Shelly Hatleberg
Bureau of Reclamation
Mid-Pacific Regional Office
2800 Cottage Way
Sacramento, CA 95825

Subject: Comments on the Draft EA/FONSI for the Temporary Supply of Incremental Level 4 Water to Willow Creek Mutual Water Company for Wetlands Management

Ms. Hatleberg,

Upon review of the subject EA/FONSI, I submit the following comments. I will attempt to keep my comments in order of the respective report sections.

1.1 Introduction

What is the definition of “Incremental Level 4 Water”?

I am somewhat familiar with the CVPIA and the reports referenced under 3406(d), more specifically the Refuge Water Supply Investigations Report of 1989. There are tables in this report that identify Level 1, Level 2, Level 3 and Level 4 types of water. I cannot find reference to “Incremental Level 4” water in the report.

It would also be helpful to provide a definition of Level 2 and Level 4 water in this EA/FONSI so others not immediately familiar with these water types and what they relate to would not have to research.

DA-1

1.2 Purpose and Need

Last paragraph states, “The need for the proposed action arises from the Company’s loss of its prior water supply from the Provident Irrigation District (PID).”

When did the Company lose its prior water supply? Why? What water types did this water supply consist of? What was the annual average of this water supply, and maximum/minimum annual deliveries from this water supply to the easement lands? Was this water supply available year-round, or only available during certain months?

DA-2

Suggest adding a “Background” subsection to provide more information and details to address the questions that follow below.

DA-3

I researched the Willow Creek-Lurline Wildlife Management Area (WCL), and obtained details from a couple webpages sponsored by the U.S. Fish and Wildlife Service (USFWS) (links: <http://www.fws.gov/refuges/profiles/index.cfm?id=83570> and http://www.fws.gov/sacramentovalleyrefuges/r_willowck.html).

Information provided at the first referenced link states there are 6,000 acres of conservation easement lands in the WCL, with the second link providing information that there is 5,488. Either number exceeds the 4,000 acres referenced in the second paragraph under *1.2 Purpose and Need*. Also, information at the first link states “Conservation easements have been acquired on 6,000 acres, requiring landowners to maintain land in wetlands.” However, the second link contains information with an imbedded sub-link to: http://www.fws.gov/sacramentovalleyrefuges/pl_easements.html. This information contains the statement, “The Service does not require landowners to flood their wetland properties, however, the Service reserves the right to flood easement properties at the government’s expense.”

Depending on which number is used, 6,000 or 5,488 total acres of conservation easements in the WCL, that leaves either 2,000 or 1,488 acres (respectively) of conservation easements in the WCL that are not identified under this EA/FONSI as needing water or losing their existing water supply.

Questions:

- 1) How long have the WCL conservation easements been in place?
- 2) What was the purchase price paid by the U.S. Fish and Wildlife Service for the 4,000 acres of conservation easements referenced in *1.0 Purpose and Need*?
- 3) Was there a reliable water supply for these lands when the conservation easements were purchased?
- 4) Do either the 2,000 or 1,488 acres (which ever is correct) of easement lands within the WCL that exceed the 4,000 acres referenced in *1.0 Purpose and Need* currently have a reliable water supply? Or is this acreage also in need of a water supply? If so, why is this amount not included with the 4,000 acres referenced in *1.0 Purpose and Need*?
- 5) On one of the USFWS sites, it states that the landowners are required to maintain the easement land in wetlands. Yet the other referenced USFWS site states that the landowners are not required to flood their wetland properties, but that the USFWS reserves the right to flood the easement properties at the government’s expense. Is this action taken voluntarily by WCL representing the conservation easement landowners, or is the USFWS exercising its right to flood these easement properties? Is the USFWS paying for the purchase of this temporary transfer water to the WCL, or is the WCL paying for this water?
- 6) In *1.1 Introduction*, it states that “Reclamation purchases Incremental Level 4 Water from willing sellers for wildlife refuges...” Who is Reclamation buying this 3,000 AF from in order to transfer to WCL?
- 7) What price per acre foot is Reclamation proposing to charge for this temporary transfer water? Is Reclamation paying fair market value for the water? Will Reclamation charge WCL the same rate or incorporate an administrative cost above the original purchase price when transferring to WCL?
- 8) Why doesn’t WCL directly purchase this 3,000 AF instead of Reclamation acting as a type of broker?

2.1 No Action Alternative

This single paragraph states “Under the No Action Alternative,....maintenance of the wetlands solely dependent on the use of groundwater.”

This is the first mention about the WCL easement lands being solely dependent on groundwater. This also implies that these lands are receiving groundwater, which is contrary to the impression given in the third/last paragraph of *1.2 Purpose and Need* that these lands have no water supply.

This report is lacking significant details on past and current water supplies and water deliveries to the WCL easement lands.

Fast forward to *3.1.2 Environmental Consequences* on page 7. The *No Action* analysis reads “Under the No Action Alternative, the amount of surface water delivered to the Company’s wetlands would decrease and, therefore, wetland habitat suitable for migratory waterfowl and GGS would likely decrease.” This indicates that there is surface water being delivered to the WCL easement lands.

DA-4

What is the actual present water use? Is there: a) no water delivered (1.2 Purpose and Need, 3rd paragraph); b) some groundwater being delivered (2.1 No Action Alternative – groundwater); c) surface water being provided (3.1.2 Environmental Consequences); or, d) currently a combination of groundwater and surface water being delivered to the WCL conservation easement lands?

DA-5

3.1.2 Environmental Consequences does not even address what the environmental consequences would be for the Proposed Action if this temporary surface water supply were provided to the WCL lands. This brief paragraph discusses diversion point, the responsibilities for this water relative to the Company, and preparation of a wetland habitat management plan. One might deduce that there will be no net effect on wetland habitat suitable for migratory waterfowl or GGS as a result from this temporary water supply, since this subsection is void of making any correlation between the temporary surface water supply and related environmental consequences.

DA-6

The references between these sections are contradictory. No solid consistent supporting documentation is provided to allow for development of a reasonable analysis, leaving the current analysis weak.

2.3 Water Delivery Options Considered but Not Selected

1. Provide up to 3,000 AF of Incremental Level 4 Water to the Sacramento, Colusa and Delevan refuges.

What is meant by “ ‘extra’ Level 2 water”? This paragraph states “In all years, with the possible exception of very dry years, these refuges receive their full Level 2 water deliveries.....” If this is the case, is Reclamation delivering additional Level 2 water to these refuges? If so, why?

DA-7

This paragraph continues with the statement “Since these Sacramento NWRC refuges are ‘water rich’ in comparison to south-of-Delta CVPIA refuges, it was determined that they were not in critical need of additional water. What is meant by “water rich” in this context?

DA-8

I’ve seen various reports pointing out that Reclamation has not yet met its obligation to provide full CVPIA water supplies to the refuges, particularly to south-of-Delta refuges. Why is Reclamation providing “extra” Level 2 water to north-of-Delta refuges (if my interpretation of the above referenced statement is correct) when south-of-Delta refuges could use this water?

DA-9

This paragraph also includes the statement “the Delevan refuge also receives annually up to 6 TAF of Incremental Level 4 water that Reclamation permanently purchased from the Corning Water District in the 1990s.” I obtained information from one Reclamation office about this “permanent purchase water” and that the maximum amount of the “permanent purchase water” which can be physically delivered to any refuge under this purchase is 5,355AF, and depending on Reclamation’s annual Central Valley Project allocation, the actual amount available for delivery to the refuges has been as low as 2,142AF.

DA-9

4. Provide up to 3,000 AF of Incremental Level 4 water to San Joaquin Valley CVPIA refuges (SJV refuges).

This is obviously a water delivery option that needs to be identified as a viable alternative in this EA with a thorough analysis.

DA-10

The third paragraph in Number 4 states “Because of the uncertainties involved with the above reasons regarding ‘north’ to ‘south’ water transfers, providing the 3,000 AF of purchased Incremental Level 4 water to the SJV refuges was determined to not be the best use of the water.”

What “above reasons” are provided, discussed, and analyzed? I have read this draft EA/FONSI several times and cannot identify anything that remotely addresses “above reasons regarding ‘north’ to ‘south’ water transfers. This information is required for one to determine if this statement can be supported. And it may be as simple as a page of text containing the information and analysis was inadvertently omitted when posting this draft EA/FONSI.

DA-11

In the same paragraph/sentence, I reference the phrase “providing the 3,000 AF of purchased Incremental Level 4 water to the SJV refuges was determined to not be the best use of the water.”

If the water is purchased by Reclamation for the purpose of delivery to and use by the refuges, that then IS the *best* use of the water, as it is the primary reason for the action. Under 2.3, water delivery option #1, I interpret that the south-of-Delta refuges are in critical need of water. In my view, the *best* use of refuge water purchased by Reclamation would be to deliver this water to refuges in critical need south-of-Delta. It appears that only 3 of the 14 refuges (and refuge units) located south-of-Delta do not have sufficient water conveyance facilities to receive this water. This leaves 11 other refuges south-of-Delta that could take delivery of this water supply.

DA-12

Why would Reclamation take the action of purchasing water for the refuges, then redirect this water through a transfer to non-refuge conservation easement lands, when there are refuges in need of water supplies?

DA-13

I appreciate consideration of my comments.

Sincerely,

Don Anderson
c/o 722 Mallard St.
Redding, CA 96003
e-mail: mtnaire@comcast.net